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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 168

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, and JOHN L. LEWIS, as President, International Union, United Mine Workers of America, *Petitioners,*

vs.

THE UNITED STATES OF AMERICA.

No. 169

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, and JOHN L. LEWIS, as President, International Union, United Mine Workers of America, and as Union Representative Trustee, Board of Trustees, United Mine Workers of America Welfare and Retirement Fund, *Petitioners,*

vs.

THE UNITED STATES OF AMERICA.

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI

Government, in its brief in opposition to the petition for writs of certiorari, has not met petitioners' arguments in support of said petition. These matters are covered in petitioners' petition brief. Petitioners do not concur with Government that the Court need only consider the questions listed on page 2 of Government's brief. Mindful of the functions

of a reply brief, we shall herein answer briefly certain of Government's assertions in respect of which further explanation is not repetitious. The points as numbered herein correspond to those as numbered in Government's brief.

ARGUMENT

Government's opposition to the petition for writs of certiorari is predicated, in the main, upon its erroneous contention that the principal questions presented by the petition were decided in *United States* v. *United Mine Workers*, 330 U. S. 258. Distinctions between that case and the instant one are demonstrated in petitioners' original brief (p. 72). Government's brief offers no answer thereto.

1.

a. Government errs when it characterizes the temporary restraining order as merely "erroneous": it is *void*. The District Court did not, and could not, acquire jurisdiction in this case, and Government has not undertaken to show how such jurisdiction existed. In instituting its suit, Government relied upon Section 208 of the Labor Management Relations Act, 1947, (R. 7). Those statutory provisions were void because they attempted to vest in district courts a jurisdiction which collided with fundamental rights guaranteed by the Constitution. Further, in enacting such provisions, Congress attempted, in violation of Article III of the Federal Constitution, to vest such courts with nonjudicial functions; it attempted to empower them to act in proceedings which do not partake of a case or controversy in the constitutional sense, to which judicial

power is constitutionally confined (*Muskrat* v. *United States*, 219 U. S. 346, 357); and it further attempted to entrust to such courts proceedings which involved no finality of decision and no finality or conclusive determination of facts and of legal issues; but, in lieu thereof, it has provided merely for decrees effective for an eighty-day period. *Postum Cereal Co.* v. *California Fig-Nut Co.*, 272 U. S. 692; *Aetna Life Insurance Co.* v. *Haworth*, 300 U. S. 227. Jurisdiction and power granted federal district courts by congressional enactment but prohibited by the Constitution could produce only an abortive decree or order.

The temporary restraining order was responsive to the statutory provisions, and it, like the statutory provisions, conflicted with fundamental rights guaranteed by the Constitution and was, therefore, void. In *Thomas* v. *Collins*, 323 U. S. 516 (1945), Thomas had refused to comply with a court order enjoining him from soliciting Union memberships without first obtaining an organizer's card, as required by a Texas statute. Thomas was not required to obey the court's order and contest it on appeal. Instead the Supreme Court, finding that the statute contravened the Constitution, said that Thomas had one of three choices, one of which was to stand on his rights and speak freely, and thereof the Court held: "We think he was within his rights in doing so." Furthermore, the order in the instant case was void because jurisdictional prerequisites were lacking. Cases cited by Government to sustain the validity of the restraining order (p. 9) are not apposite. The irrelevancy of *Howat* v. *Kansas*, 258 U. S. 181, is discussed in petitioners' original brief (p. 73). Neither *United States* v. *Shipp*, 203 U. S. 563; *Gompers* v. *Buck's*

Stove and Range Co., 221 U. S. 418, 450; nor *Worden* v. *Searls*, 121 U. S. 14, was concerned with the exercise of a jurisdiction prohibited by the Constitution, nor with orders requiring obedience by alleged contemnors to conduct, ordered by the alleged contemned tribunal, which infringed fundamental rights guaranteed by the Constitution.

Government fails to distinguish between the regulation of the right to strike and the absolute denial thereof. It ignores the issues that the powers of Congress and the judiciary are not absolute under the federal constitution and that Congress and the federal district court have acted beyond the limits of their functions, constitutionally granted. It errs when it asserts (p. 10) that the injunction provisions of said Act are "for the regulation of strikes", when, in fact, for the number of days specified in the statutory provisions the right to strike is denied absolutely. Petitioners noted in their original brief (p. 57) the statement in *Dorchy* v. *Kansas*, 272 U. S. 306, 311, that the right to strike is not absolute, but therein petitioners asserted that intrustion of that right must be tested in the distinction *between dealing with the abuse* and *the curtailment of the right itself*. *United Automobile Workers* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, cited by Government (p. 10), involved provisions of the Wisconsin Employment Peace Act, which made it an unfair labor practice for an employee individually or in concert with others "to engage in any concerted effort to interfere with production, *except by leaving the premises in an orderly manner for the purpose of going on strike*" (Italics supplied). The *right* to strike was recognized and preserved by the Wisconsin statute. Neither the majority of the Supreme Court of the United States, nor the Union, regarded the work stoppages as

"a strike" (opinion, note 17). The decision in that case concerned the right of the State of Wisconsin to police the *method* employed in the concerted effort of employees.

Nor do the other cases cited by Government (p. 10), involve the absolute denial of the right to strike. *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469; *United States* v. *Hutcheson*, 312 U. S. 219; and *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797, each involved alleged conduct allegedly proscribed by the Sherman Anti-Trust Act and by it declared illegal. In the first two of such cases, the Supreme Court refused to regard the strike activities of the Unions involved in said cases as violative of the Sherman Anti-Trust Act; while in the *Allen Bradley* case the Court enjoined only those prohibited activities in which the Union engaged in combination with any person, firm or corporation which is a non-labor group. In *United States* v. *Petrillo*, 332 U. S. 1, (1946) the Court held that the First and Thirteenth Amendments questions were prematurely raised, and that such questions rooted in the information rather than upon the face of the statute. Readily distinguishable is the statute in the *Petrillo* case from the instant one wherein denial of constitutional rights is inherent in the language of Section 208 of the Act.

Nor is there any relevancy in the citation of *Texas and N. O. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 565-7 (Government's brief, p. 10) to the issues in the instant case. Therein the Railway Labor Act of 1926 provided for voluntary arbitration between carriers and labor organizations in labor disputes. The award made pursuant to arbitration was rendered conclusive as to the merits and facts of the controversy, as well as enforceable. The

Brotherhood's proceedings sought to enjoin the defendants from interfering with, influencing or coercing the clerical employees of the Railroad Company in the matter of their organization and designation of representatives for the purposes set forth in the Act. The right to strike was not in issue, and the statute was aimed "at the interference with the right of employees to have representatives of their own choosing"; and as the Court stated (p. 571):

> "As the carriers subject to the Act have no constitutional right to interfere with the freedom of the employees in making their selection, they cannot complain of the statute on constitutional grounds."

In *In re Debs*, 158 U. S. 564, cited by Government, the following pertinent language is found in the opinion (p. 598):

> "* * * *The right of any laborer, or any number of laborers to quit work was not challenged. The scope and purpose of the bill was only to restrain forcible obstructions of the highways* along which interstate commerce travels and the mails are carried." (Italics supplied).

As above noted, *United States* v. *United Mine Workers*, 330 U. S. 258, is not controlling of the issues herein. Therein, the Supreme Court specified the manner of full compliance: (1) unconditional withdrawal of the notice to Secretary of Interior Krug of the termination of the Krug-Lewis agreement, (2) notice of such withdrawal to Union members, and (3) withdrawing and instructing Union members of the withdrawal of any other notice to the effect that the "Krug-Lewis agreement is not in full force and effect until the final determination of the basic issues arising under the said agreement". (p. 305). In addition to

infringing upon other constitutional rights, in the instant case, the district court ordered that the Union "forthwith instructs members employed in said mines to cease the said strike and immediately to return to their employment"; and the same court declared that if the national health and safety "was imperiled by the walkout they [the miners] would have to go back to the mines." (R. 361). Petitioners insist that the district court could not constitutionally be granted, nor assume, a jurisdiction to order conduct wholly in violation of the Constitution, and that therefore obedience to the temporary restraining order could not be required. The validity of the injunction provisions of the Labor-Management Relations Act, 1947, the temporary restraining order and the preliminary injunction, is relevant in the instant case.

b. Government's position that the writ of certiorari will not issue to review the evidence or the inferences drawn from it, in the instant case, is countered by *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 254, wherein it is stated:

> "A question of law is thus raised, which entails an examination of the record, not for the purpose of weighing the evidence but only to ascertain whether there was some competent and substantial evidence before the jury fairly tending to sustain the verdict."

See also *Mortensen* v. *U. S.*, 322 U. S. 369; *In Matter of Michael*, 326 U. S. 224.

Petitioners assert that the record shows no wilful and deliberate disobedience and violation of the restraining order, and that, as a matter of law, under the evidence in

the record, petitioners were not guilty of criminal contempt. Furthermore, the conclusions of law of both lower courts are contrary to applicable principles of law.

Government's reliance upon cases cited in support of its contention that concurrence by both lower courts in the findings are final is negated by *Baumgartner* v. *United States of America*, 322 U. S. 665, holding that:

> "The rule that the concurrent findings of two lower courts are persuasive proof in support of their judgments does not relieve the Supreme Court of the United States of the task of examining the foundation for findings in a particular case."

c. Petitioners disagree with Government's argument (p. 11) that no question for review is presented by the amounts of the fines imposed. The record shows no basis, either in law or in fact, for holding petitioners guilty of criminal contempt. *Matter of Michael*, 326 U. S. 224; *Anderson* v. *Dunn*, 6 Wheat. 204, 231, 5 L. ed. 242. But even though the Court is of opinion that petitioners were guilty thereof, the fines were in violation of the Eighth Amendment to the Constitution, and under the facts and circumstances shown in the record and discussed in petitioners' original brief (pp. 88-101), the fines are excessive, arbitrary and clearly erroneous, and represent an abuse of judicial discretion. Federal appellate courts have recognized that punishments imposed in contempt proceedings are reviewable. *Moore* v. *U. S.*, 10 Cir. 150 F. 2d 323 (1945); *Huffman* v. *U. S.*, 10 Cir., 148 F. 2d 943, 944; *Securities & Exchange Commission* v. *Okin*, 2 Cir., 137 F. 2d 862 (1943). In *United States* v. *United Mine Workers*, *supra*, the Supreme Court reviewed and modified the fines imposed by the district court. Even though the Court is

of opinion that petitioners were guilty as charged, the fines, nevertheless, should not stand.

2.

In petitioners' brief (p. 109) reference is made to *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 515, in support of the contention that the Court of Appeals erred in dismissing the appeal in Case No. 9944 as moot. Approval of the principle therein enunciated appears in the recent case, decided November 15, 1948, of *Ford Motor Co.* v. *U. S.*, 335 U. S. 313, 69 S. Ct. 93, 98.

CONCLUSION

For the reasons set forth and discussed in petitioners' original brief and in this reply brief, it is submitted that the petitions for writs of certiorari, as prayed for, should be granted.

Respectfully submitted,

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